



K A N S A S

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DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL SERVICES

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MEMORANDUM

TO: Employees of the Department of Administration
FROM: Jack Rickerson
DATE: January 13, 2005
SUBJECT: Changes to the Department's FMLA Policy

The Department's leadership has adopted a new Family and Medical Leave Act (FMLA) policy. A copy of that policy is attached. Also attached are selected excerpts from state personnel regulations which help explain the provisions and limitations of the Act.

Our new policy represents a major change in when most instances of FMLA leave will be tracked and counted. Under previous policy, all time away from work that was taken due to circumstances that qualified under the FMLA was tracked and counted against an employee's 12- work week entitlement. Our new policy tracks and counts such leave only when an employee is either in without pay status or begins shared leave, unless the employee requests FMLA coverage sooner. The new policy is less intrusive in its nature and in line with the values we have been discussing.

Please contact Kim Warren or Connie Wahweotten at 296-6496 if you have questions about the new policy or the entitlements of the FMLA. Thanks.

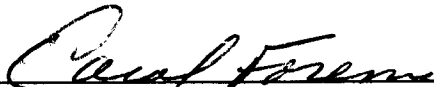
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Attachments

DEPARTMENT OF ADMINISTRATION

POLICY ON FAMILY AND MEDICAL LEAVE ACT (FMLA)

The Family and Medical Leave Act of 1993 (FMLA) provides eligible employees entitlement to 12 workweeks of paid or unpaid leave during any 12-month period for the birth of the employee's child, the placement with the employee of a child for adoption or foster care, a qualifying illness or disability of the employee, or a serious health condition of the employee's child, spouse, or parent. K.A.R. 1-9-27 provides more detail on the provisions of the FLMA and the requirements for managing qualifying circumstances. The Department of Administration's policy is that FMLA leave will be authorized for qualifying situations when an employee is either in without pay status or begins shared leave (if eligible), unless the employee requests FMLA coverage sooner.

Questions about this policy or requests for assistance in managing this policy should be directed to DofA Personnel.



Carol Foreman, Deputy Secretary
Department of Administration



Date

Attachment to January 13, 2005 memo regarding changes to the Department's FMLA Policy

Selected Excerpts from K.A.R. 1-9-27

Family and Medical Leave Act of 1993 (FMLA)

- (3) (B) Each employee shall use all accrued sick leave and vacation leave prior to the use of leave without pay for all leave that meets FMLA criteria.
- (c) An employee who meets the following conditions shall be eligible for leave under the FMLA:
 - (1) the employee has been in pay status for any part of a week for at least 52 weeks, including any period of paid or unpaid leave during which other benefits or compensation were provided to the employee by the agency; and
 - (2) the employee has worked for the state at least 1,250 hours during the 12-month period immediately before the beginning of the leave designated as FMLA leave.
- (d) Circumstances that qualify under the FMLA shall include the following:
 - (1) the birth of the employee's child and the care of the child within the 12 months immediately following birth;
 - (2) the placement with the employee of a child for adoption or foster care within the 12 months immediately following placement;
 - (3) physical or psychological care due to a serious health condition of any of the following individuals:
 - (A) the employee's spouse;
 - (B) a child of the employee who meets one of the following criteria:
 - (i) the child is under age 18; or
 - (ii) the child is age 18 or older and incapable of daily self-care because of a mental or physical disability as defined by the Americans with disabilities act, 42 U.S.C. 12101 et seq.; or
 - (C) the employee's parent; or

- (4) the employee's own serious health condition that prohibits the employee from performing all or part of the essential functions of the employee's position within the meaning of the Americans with disabilities act.
- (e) For purposes of the FMLA, "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:
 - (1) inpatient care; or
 - (2) continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care professional shall involve at least one of the following:
 - (A) a period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, if it involves either of the following:
 - (i) treatment two or more times by a health care provider or a
 - (ii) provider of health care services under orders of the health care provider; or
 - (iii) at least one treatment by a health care provider that results in a regimen of continuing treatment under the health care provider's supervision;
 - (B) any period of incapacity due to pregnancy or for prenatal care;
 - (C) any period of incapacity or treatment for incapacity due to one of the following chronic serious health conditions:
 - (i) a condition that requires periodic treatment by a health care provider;
 - (ii) a condition that continues over an extended period of time; or
 - (iii) a condition that causes episodic incapacity rather than a continuing period of incapacity;
 - (D) a period of incapacity that is permanent or long-term and is due to a condition for which treatment may not be effective; or
 - (E) any absence to receive multiple treatments by a health care provider for one of the following:

- (i) restorative surgery after an accident or other injury; or
 - (ii) a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of treatment.
- (f)
 - (1) An employee shall receive intermittent leave or a reduced work schedule when medically necessary for the employee's serious health condition or to care for a family member with a serious health condition. An employee may receive intermittent leave or a reduced work schedule for the birth of the employee's child or for the placement of a child with the employee for adoption or foster care.
 - (2) the exempt status of an exempt employee shall not be affected if deductions are made from the employee's salary for any hours taken as intermittent leave or a reduced work schedule within a work week.
 - (3) the appointing authority may transfer any employee to an available position with equivalent pay and benefits during a period of intermittent leave or a reduced work schedule.
 - (4) Any employee returning from intermittent leave or a reduced work schedule shall be returned to the same or equivalent position with equivalent pay, benefits, and terms and conditions of employment, in accordance with K.A.R. 1-9-6.
- (g)
 - (1) The appointing authority may require an employee to provide a certification containing evidence necessary to establish that the employee is entitled to leave under the FMLA. The employee shall be given a written notice of the requirement. The first certification shall be at employee expense. The appointing authority may require a second certification at agency expense when the validity of the first certification is in doubt. A third certification may be required at agency expense when the first and second certifications differ, and the third certification shall be final and binding. Employees shall be allowed at least 15 calendar days to provide the requested certification.
 - (2) The agency may require the employee to provide one recertification opinion every 30 days, at employee expense, except that a recertification opinion may be required before the end of 30 days if circumstances described by the previous medical certification have changed significantly or the agency receives information that casts doubt upon the employee's reason for the absence.
- (h) Each agency shall maintain the employee's group health insurance coverage under the same conditions and with the same agency contributions as provided when no leave is taken.